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EXAMINER				
STANLEY, MARK P				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/798,153

**Applicant(s)**

LUDVIG ET AL.

**Examiner**

Mark P. Stanley

**Art Unit**

4157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date 3/10/2004
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in-  
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent; or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English.

2. Claims 1-2 and 4-28 rejected under 35 U.S.C. 102(e) as being anticipated by  
Eldering et al. (US 2004/0148625 A1 hereinafter Eldering).

**Regarding claim 1**, Eldering discloses “a method comprising: processing consumer data that represents an individual's consumer purchases; and targeting a television advertisement to the individual based on the consumer data” ([0030]-[0031], [0037], Fig. 1, where in Fig.1 item 108 the subscriber characterization module which stores subscriber data is used with item 102 the ad characterization module by item 110 the correlation module to target advertisements, where [0037] describes the consumer data as including purchase records).

**Regarding claim 2**, Eldering discloses “the method as recited in claim 1 wherein the individual comprises a subscriber to a broadcast television system” ([0030], the system described in [0030] pertains to consumers which are individual subscribers or a group of subscribers in the system).

**Regarding claim 4**, Eldering discloses “the method as recited in claim 1 wherein the consumer data comprises an indicator of a vendor associated with a product that the individual has purchased” ([0037]-[0039], [0058]-[0059], Fig. 1, where the subscriber data can include purchase records and product preferences, it is inherent that a vendor is linked to an associated product and can be tracked in the product preferences and purchase records).

**Regarding claim 5**, Eldering discloses “the method as recited in claim 1 wherein the consumer data comprises an indicator of a category associated with a product that the individual has purchased” ([0037]-[0039], [0058]-[0059], Fig. 1, where the product purchases and preferences of the subscriber stored in the subscriber characterization module must be related to a category determined by the profiler to be correlated with the ad characterization module).

**Regarding claim 6**, Eldering discloses “the method as recited in claim 1 wherein the processing comprises: accessing the consumer data associated with the individual; and generating a profile associated with the individual based on the consumer data, such that the profile indicates a product category associated with a product purchased by the individual” ([0037], [0058]-[0059]).

**Regarding claim 7**, Eldering discloses “the method as recited in claim 6 wherein the product category is selected from a group of product categories comprising frozen

foods, soft drinks, snack foods, cereals, diet foods, personal hygiene, and dental hygiene" ([0037], Fig. 1, product purchases and preferences by the subscriber can be any of the above mentioned categories and stored as such by the profiler in the subscriber characterization module).

**Regarding claim 8**, the claim is rejected for the same reasoning as claim 4 above.

**Regarding claim 9**, Eldering discloses "the method as recited in claim 1 wherein the targeting comprises: associating a consumer profile characteristic with an advertisement to be targeted;" ([0030]-[0031], Fig. 1) "broadcasting data identifying the consumer profile characteristic associated with the advertisement to be targeted to enable a client device to determine whether or not to tune to the targeted advertisement; and broadcasting in a first data stream a default, non-targeted advertisement, while simultaneously broadcasting in a second data stream the advertisement to be targeted" ([0083]-[0086], [0090], Fig. 10, where targeted ads are transmitted on a separate stream to be inserted into the original broadcast stream, the ads can be inserted by various methods as described in [0083]-[0086], including the use of in-band and out-of-band channels and transmitting synchronously or asynchronously as described with [0083] involving the use of multiple tuners as described in [0090]).

**Regarding claim 10**, the claim is rejected for the same reasoning as claims 4 and 5 above.

**Regarding claim 11**, Eldering discloses "one or more computer-readable media having computer-readable instructions thereon which, when executed by a computer, cause the computer to implement the method as recited in claim 1" ([0088]-[0091]).

**Regarding claim 12**, Eldering discloses "a system comprising: a profiling server configured to generate consumer profiles associated with broadcast television system subscribers;" ([0030]-[0031], Fig. 1, item 108 the subscriber characterization module) "a targeting server configured to maintain consumer profile characteristics in association with targeted advertisements;" ([0030]-[0031], Fig. 1, item 110 the correlation module determines related ads based on items 108 and 102, the ad and subscriber characterization modules) "and a broadcast transmitter configured to broadcast consumer profile data and targeted advertisements over a network to multiple client devices" ([0030]-[0031], [0033], Fig. 1, item 114 the ad insertion module handles transmission of targeted advertisements, [0033] describes giving the subscriber access to their profile data and it is inherent this information can be transmitted to the subscriber's client device for profile data access, along with other client devices in the network who would require access to the information such as the profiler and operator as shown in Fig. 1).

**Regarding claim 13**, Eldering discloses “the system as recited in claim 12 wherein the profiling server comprises: a profiling user interface configured to enable a user to enter rules that define how the profiling server communicates with a customer loyalty data repository from which consumer purchase data can be extracted” ([0037], [0058]-[0059], Fig. 1, where the profiling server and customer loyalty data repository operations are contained within item 108 the subscriber characterization module handled by the profiler and operator).

**Regarding claim 14**, Eldering discloses “the system as recited in claim 13 wherein the profiling user interface is further configured to enable a user to indicate specific values that may be used in defining a subscriber profile” ([0064]-[0065], Fig. 1, Fig. 5, where the user determines specific values for the subscriber characterization vector to determine correlation between the advertisements and the subscriber).

**Regarding claim 15**, the claim is rejected for the same reasoning as claims 4 and 5 above.

**Regarding claim 16**, Eldering discloses “the system as recited in claim 12 wherein the profiling server comprises: a subscriber profile data repository configured to maintain consumer profile data associated with subscribers to a broadcast television system” ([0032], Fig. 1, item 108 the subscriber characterization module performs the operations of the subscriber profile data repository).

**Regarding claim 17**, Eldering discloses “the system as recited in claim 12 wherein the targeting server comprises: a targeting user interface configured to enable a user to specify consumer profile characteristics to be associated with targeted advertisements” ([0038]-[0039], Fig. 1, item 102 the ad characterization module, where the user is the advertiser).

**Regarding claim 18**, Eldering discloses “the system as recited in claim 12 wherein the targeting server comprises: a multicast message generator configured to generate a message comprising: a transport ID that identifies a data stream over which a particular targeted advertisement is scheduled to be broadcast; a duration of the particular targeted advertisement; and a consumer profile characteristic associated with the particular targeted advertisement” ([0075]-[0076], [0078], Fig. 9 where an ad is given an available slot in a data stream for a set duration to be inserted by item 114 the ad insertion module).

**Regarding claim 19**, Eldering discloses “the system as recited in claim 18 wherein the broadcast transmitter is further configured to broadcast the message that is generated by the multicast message generator” ([0090]).

**Regarding claim 20**, Eldering discloses “a system comprising: a first tuner configured to tune to a first network channel over which broadcast television program



content may be received; a second tuner configured to tune to a second network channel over which broadcasted television subscriber profile data may be received; and a profile filter configured to direct the first tuner to tune to an alternate network channel over which a targeted advertisement may be received when a consumer profile characteristic associated with the targeted advertisement matches the television subscriber profile data" ([0083]-[0086], [0090], Fig. 10, where targeted ads are transmitted on a separate stream to be inserted into the original broadcast stream, the ads can be inserted by various methods as described in [0083]-[0086], including the use of in-band and out-of-band channels and transmitting synchronously or asynchronously as described with [0083] involving the use of multiple tuners as described in [0090]).

**Regarding claims 21**, Eldering discloses "the system as recited in claim 20 wherein the first network channel comprises an in-band network channel" ([0083] describes the use of in-band and out-of-band channels, where the channel for the standard broadcast television program content is the in-band channel).

**Regarding claim 22**, Eldering discloses "the system as recited in claim 20 wherein the second network channel comprises an out-of-band network channel" ([0083] describes the use of in-band and out-of-band channels, where the channel for the targeted advertisement is the out-of-band channel).

**Regarding claim 23**, Eldering discloses "the system as recited in claim 20 further comprising: a subscriber profile data repository configured to maintain consumer profile data associated with a particular client device ID" ([0032], the subscriber characterization module maintains the profile data, it is inherent if there is a determination to transmit a targeted advertisement to a subscriber based on their profile that the profile must be associated with a specific destination device in order to transmit the advertisement to the intended target).

**Regarding claim 24**, Eldering discloses "one or more computer-readable media comprising computer-readable instructions which, when executed, cause a computer system to: associate a consumer profile characteristic with a targeted advertisement; upon detection of an advertisement avail that is to include a targeted advertisement, generate a message that identifies the consumer profile characteristic that is associated with the targeted advertisement, a duration of the targeted advertisement, and a transport ID that identifies a data stream over which the targeted advertisement is scheduled to be broadcast; and broadcast the message over a network to one or more client devices" ([0078]-[0079], [0088]-[0091]).

**Regarding claim 25**, Eldering discloses "the one or more computer-readable media as recited in claim 24 further comprising computer-readable instructions which, when executed, cause a computer system to: simultaneously broadcast a default

advertisement on a first data stream and the targeted advertisement on a second data stream" ([0088]-[0091]).

**Regarding claim 26**, Eldering discloses "one or more computer-readable media comprising computer-readable instructions which, when executed, cause a computer system to: receive consumer profile data associated with a broadcast television system subscriber; receive a message comprising a consumer profile characteristic associated with a targeted advertisement scheduled for broadcast; determine whether the consumer profile data associated with the broadcast television system subscriber matches the consumer profile characteristic associated with the targeted advertisement; and in an event that the consumer profile data matches the consumer profile characteristic, tune from a first data stream to an alternate data stream over which the targeted advertisement is to be broadcast" ([0088]-[0091], where the computer-readable media and computer described in [0088]-[0091] carry out the process described in [0030]).

**Regarding claim 27**, Eldering discloses "the one or more computer-readable media as recited in claim 26 wherein the message further comprises a transport ID that identifies the alternate data stream" ([0083], [0088]-[0091], the stream must be identified by some means in order to switch from one tuner for the in-bound channel to the second tuner for out-of-band channel, where [0090] describes multiple tuners and [0083] describes use of in-band and out-of-band channels).

**Regarding claim 28**, Eldering discloses “the one or more computer-readable media as recited in claim 26 wherein the message further comprises a duration associated with the targeted advertisement, further comprising computer-readable instructions which, when executed, cause a computer system to: after being tuned to the alternate data stream for a time period indicated by the duration, tuning back to the first data stream” ([0088]-[0091], it is inherent that following the reception of the targeted advertisement after a set duration, the system would return to the original program, where [0084]-[0085] describes inserting a targeted ad with the use of multiple streams).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: (***See MPEP Ch. 2141***)

- a. Determining the scope and contents of the prior art;
- b. Ascertaining the differences between the prior art and the claims in issue;
- c. Resolving the level of ordinary skill in the pertinent art; and
- d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US 2004/0148625 A1 hereinafter Eldering) in view of Eldering (US 6,216,129 B1 hereinafter '129).

**Regarding claim 3**, Eldering teaches an ad management system, which correlates subscriber profiles stored in a subscriber characterization module with characterized advertisements stored in an ad characterization module to target advertisements to subscribers in a broadcast television system ([0030]). While Eldering teaches generating profile characteristics on a subscribers purchases or product preference ([0037]), and being able to retrieve or transmit information about a subscriber at an external database such as a department or grocery store tracking the subscriber's activities at the given store ([0032], [0092]), Eldering does not teach the use of a membership card assigned to the subscriber to collect data on the subscriber at an associated retail store.

However, '129 does teach an advertisement selection system which correlates subscriber profiles with ad characterizations to target advertisements toward the given subscriber, where the subscriber profile does include point of purchase data at places such as grocery stores and department stores, which is then transmitted to the advertisement selection system via internet or private network (col. 6, lines 33-51). The consumer ID to uniquely identify the subscriber and the purchases can be a credit card (col. 8, lines 13-17), which is essentially identical to a membership card in the purpose of tracking and identifying a subscriber's purchases at points of purchases.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to be motivated to combine the teachings of Eldering with that of '129, to better track and retrieve data on a subscriber for targeting advertisements through the use of a card when the subscriber performs activities at associated retail stores. (see Eldering [0032], [0037])

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Flickinger (US 2005/0283796 A1) – delivering targeted advertising to subscribers

Ukai (US 2006/0271958 A1) – TV program selection for determining preferred programs for a view

### ***USPTO Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark P. Stanley whose telephone number is (571) 270-3757. The examiner can normally be reached on 9:00AM - 5:00PM Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4157

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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